

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Declaratory Ruling Clarifying) MB Docket No. 16-126
that Notices Required by Section 76.1602(b))
May Be Distributed by Email)

REPLY COMMENTS OF NCTA AND ACA

The National Cable & Telecommunications Association (“NCTA”) and the American Cable Association (“ACA”) hereby submit these reply comments in response to comments filed on the Public Notice¹ in the above-captioned proceeding.²

In the Petition, NCTA and ACA asked the Media Bureau to clarify “that electronic dissemination by email to subscribers for whom a cable operator has a confirmed email address, by the provision of appropriately-noticed links to websites, or by other electronic measures reasonably calculated to reach individual customers, satisfies the requirement if the information is also available in print upon customer request.”³ A number of commenters filed in support of the Petition, including a group of 83 small and mid-sized cable operators.⁴ No parties filed in

¹ Public Notice, *Media Bureau Seeks Comment on Petition for Declaratory Ruling Filed by National Cable & Telecommunications Association and American Cable Association*, DA 16-407 (rel. Apr. 14, 2016).

² Petition for Declaratory Ruling of NCTA and ACA, MB Docket No. 16-126 (filed Mar. 7, 2016) (“NCTA/ACA Petition”).

³ *Id.* at 1.

⁴ Letter from 83 Small and Mid-Sized Cable Operators to Marlene H. Dortch, Secretary (filed May 26, 2016) (“Letter from 83 Small and Mid-Sized Cable Operators”); Comments of Cequel Communications, LLC d/b/a Suddenlink Communications (filed May 26, 2016) (“Suddenlink Comments”); Comments of Comcast Corporation (filed May 26, 2016) (“Comcast Comments”); Comments of Charter Communications, Inc. (filed May 26, 2016) (“Charter Comments”); Comments of Cox Communications, Inc. (filed May 26, 2016) (“Cox Comments”); Comments of the United States Telecom Association (filed May 26, 2016) (“USTelecom Comments”).

opposition in the initial round of comments.⁵ Given the overwhelming support in the record, the Media Bureau should act swiftly to grant NCTA's and ACA's request.

The record indicates that customers increasingly *prefer* electronic communications to “snail mail.” MVPDs confirm that they have seen a marked increase in customer's preference for electronic communications.⁶ Specifically, Cox notes that “since undertaking a concerted effort towards paperless billing in early 2015, Cox's residential subscribers opting for paperless billing increased from 14% to 41%,”⁷ while Suddenlink reports that roughly 20% of its customer base now participates in paperless billing.⁸ And as Comcast observes, electronic communications are often more useful to consumers because they “are more likely to be read and more likely to be retained by customers than hard copy notices.”⁹ In any event, as the 83 small and mid-sized operators who filed in support of the Petition correctly note, subscribers “would still have the flexibility of choosing to continue receiving a paper version of the required notices.”¹⁰

⁵ As these reply comments were being finalized, NCTA and ACA became aware of reply comments filed by NATOA that raise issues no party raised in the first round of comments. NCTA and ACA intend to respond to any issues newly raised in the reply round in due course.

⁶ Charter Comments at 1 (“In recent years, however, electronic mail and publicly accessible websites have revolutionized how businesses interact with their customers, and – when given the option – customers have increasingly chosen to receive communications via electronic means.”); Letter from 83 Small and Mid-Sized Cable Operators at 1 (“Allowing us, and cable operators like us, to provide customer service information via email ... would benefit our subscribers, who increasingly prefer to receive their communications electronically.”); Suddenlink Comments at 1 (“It is beyond dispute that businesses and consumers alike are inexorably migrating from paper to electronic communications.”); USTelecom Comments at 2-3 (“USTelecom agrees with Petitioners that these communication tools have been ‘widely accepted – even expected – by customers’ ...”).

⁷ Cox Comments at 2.

⁸ Suddenlink Comments at 2.

⁹ Comcast Comments at 2.

¹⁰ Letter from 83 Small and Mid-Sized Cable Operators at 1; *see also* Charter Comments at 3; Comcast Comments at 2 (“By clarifying that ‘written information’ includes electronic communications reasonably calculated to reach individual customers, the Media Bureau would continue to ensure that customers receive effective notice of the required information, while also putting in place a flexible standard that would allow cable operators to adapt their delivery methods to modern technology and customer expectations.”).

The record also confirms that granting the Petition would have a positive impact on the environment, reducing waste and energy consumption, as well conserving water.¹¹ It would, according to commenting parties, eliminate more than 100 million pieces of paper¹² and reduce the “fuel burned in delivering the notices to subscribers, and additional fuel used to haul the notices to a recycling facility or landfill.”¹³ Charter in particular notes that “eliminating the annual notice required by Section 76.1602(b) for even one-fifth of Charter’s approximately 17.3 million post-merger video subscribers would result in 96,880 fewer pounds of paper consumed, over four hundred thousand fewer pounds of greenhouse gases produced, over one million gallons of wastewater avoided, and 4,623 fewer household garbage bags of solid waste annually.”¹⁴ As Charter states, “there would be no corresponding consumer harms that could possibly outweigh [the Petition’s] substantial benefits.”¹⁵ And, indeed, no such harms have been identified by any commenting party.

While the primary focus of our Petition was on the notices required under Section 76.1602 of the Commission’s rules, we also solicited the Bureau’s confirmation that electronic communications reasonably calculated to reach individual customers may be provided for the notices required under Section 76.1603, “given the latitude the Commission has already afforded cable operators” under that section.¹⁶ No party opposed that request. Comcast supported that

¹¹ See Cox Comments at 2.

¹² NCTA/ACA Petition at 6. The real number is likely to be significantly higher as Comcast alone uses more than 100 million pages of paper each year to distribute its Section 76.1602(b) notices. Comcast Comments at 1.

¹³ USTelecom Comments at 4.

¹⁴ Charter Comments at 2-3, *citing* Financial Paper Footprint?, PayItGreen.org, <http://www.payitgreen.org/business/greencalculators/footprint-calculator>.

¹⁵ Charter Comments at 3.

¹⁶ NCTA/ACA Petition at 7 n.18.

request, observing that electronic communications provide a “more effective means of conveying notices than is publication in local newspapers.”¹⁷ Given the overwhelming support in the record demonstrating the effectiveness of electronic communications and present day customer preferences to receive communications via electronic means,¹⁸ the Bureau should include Section 76.1603 in its declaratory ruling.

CONCLUSION

Given that no consumer harms have been identified by any party (nor could any party reasonably claim that such harms exist), while the public interest benefits of the proposal are considerable, the Media Bureau should act swiftly to grant the Petition.

Respectfully submitted,



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¹⁷ Comcast Comments at 3.

¹⁸ *See, e.g.*, Suddenlink Comments at 1-2 (noting the superiority of electronic communications); Cox Comments at 1-2.